

By: Solomons

H.B. No. 10

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of mortgage loan originators; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle E, Title 3, Finance Code, is amended by adding Chapter 180 to read as follows:

CHAPTER 180. MORTGAGE LOAN ORIGINATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 180.001. SHORT TITLE. This chapter may be cited as the Secure and Fair Enforcement for Mortgage Licensing Act.

Sec. 180.002. PURPOSE. The purpose of this chapter is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive, or fraudulent practices by mortgage loan originators.

Sec. 180.003. DEFINITIONS. In this chapter:

(1) "Clerical or support duties," following the receipt of an application from a consumer, includes:

(A) the receipt, collection, distribution, and analysis of information related to the processing or underwriting of a residential mortgage loan; and

(B) communication with a consumer to obtain information necessary to process or underwrite a loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling the consumer about

1 residential mortgage loan rates or terms.

2 (2) "Depository institution" has the meaning assigned
3 by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section
4 1813). The term includes a credit union.

5 (3) "Federal banking agency" means:

6 (A) the Board of Governors of the Federal Reserve
7 System;

8 (B) the Office of the Comptroller of the
9 Currency;

10 (C) the Office of Thrift Supervision;

11 (D) the National Credit Union Administration;

12 (E) the Federal Deposit Insurance Corporation;

13 or

14 (F) the successor of any of those agencies.

15 (4) "Finance commission" means the Finance Commission
16 of Texas.

17 (5) "License" means a license issued under the laws of
18 this state to an individual acting as or engaged in the business of
19 a mortgage loan originator.

20 (6) "Loan processor or underwriter" means an
21 individual who performs clerical or support duties as an employee
22 at the direction of and subject to the supervision and instruction
23 of a person licensed under Chapter 156 or exempt from licensure
24 under that chapter.

25 (7) "Mortgage loan originator":

26 (A) means an individual who:

27 (i) takes a residential mortgage loan

1 application; and

2 (ii) offers or negotiates the terms of a
3 residential mortgage loan for compensation or gain; and

4 (B) does not include:

5 (i) an individual who performs solely
6 administrative or clerical tasks on behalf of a person described by
7 Paragraph (A);

8 (ii) a person who performs only real estate
9 brokerage activities and is licensed or registered by the state as a
10 real estate broker or salesperson, unless the person is compensated
11 by:

12 (a) a lender, mortgage broker, or
13 other loan originator; or

14 (b) an agent of a lender, mortgage
15 broker, or other loan originator; or

16 (iii) a person who is involved solely in
17 providing extensions of credit relating to timeshare plans, as
18 defined by 11 U.S.C. Section 101(53D).

19 (8) "Nationwide Mortgage Licensing System and
20 Registry" means a mortgage licensing system developed and
21 maintained by the Conference of State Bank Supervisors and the
22 American Association of Residential Mortgage Regulators for the
23 licensing and registration of state-licensed mortgage loan
24 originators.

25 (9) "Nontraditional mortgage product" means a
26 mortgage product other than a 30-year fixed rate mortgage.

27 (10) "Person" means an individual, corporation,

1 company, limited liability company, partnership, or association.

2 (11) "Real estate brokerage activity" means an
3 activity that involves offering or providing real estate brokerage
4 services to the public, including:

5 (A) acting as a real estate broker or salesperson
6 for a buyer, seller, lessor, or lessee of real property;

7 (B) bringing together parties interested in the
8 sale, purchase, lease, rental, or exchange of real property;

9 (C) negotiating, on a party's behalf, any
10 provision of a contract relating to the sale, purchase, lease,
11 rental, or exchange of real property, other than a negotiation
12 conducted in connection with providing financing with respect to
13 such a transaction;

14 (D) engaging in an activity for which a person is
15 required to be registered or licensed by the state as a real estate
16 broker or salesperson; and

17 (E) offering to engage in an activity described
18 by Paragraphs (A) through (D) or to act in the same capacity as a
19 person described by Paragraphs (A) through (D).

20 (12) "Registered mortgage loan originator" means an
21 individual who:

22 (A) is a mortgage loan originator and is an
23 employee of:

24 (i) a depository institution;

25 (ii) a subsidiary that is:

26 (a) owned and controlled by a
27 depository institution; and

1 (b) regulated by a federal banking
2 agency; or

3 (iii) an institution regulated by the Farm
4 Credit Administration; and

5 (B) is registered with, and maintains a unique
6 identifier through, the Nationwide Mortgage Licensing System and
7 Registry.

8 (13) "Regulatory official" means:

9 (A) the commissioner of the Texas Department of
10 Banking;

11 (B) with respect to Chapters 156 and 157, the
12 savings and mortgage lending commissioner;

13 (C) with respect to Chapters 342, 347, 348, and
14 351, the consumer credit commissioner; and

15 (D) with respect to Chapter 127, the credit union
16 commissioner.

17 (14) "Residential mortgage loan" means a loan
18 primarily for personal, family, or household use that is secured by
19 a mortgage, deed of trust, or other equivalent consensual security
20 interest on a dwelling, as defined by Section 103(v) of the Truth in
21 Lending Act (15 U.S.C. Section 1601 et seq.), or on residential real
22 estate.

23 (15) "Residential real estate" means real property
24 located in this state on which a dwelling is constructed or intended
25 to be constructed.

26 (16) "Rulemaking authority" means:

27 (A) the finance commission, except as provided by

1 Paragraph (B); or

2 (B) with respect to Chapter 127, the Credit Union
3 Commission.

4 (17) "S.A.F.E. Mortgage Licensing Act" means the
5 federal Secure and Fair Enforcement for Mortgage Licensing Act of
6 2008 (Pub. L. No. 110-289).

7 (18) "Unique identifier" means a number or other
8 identifier assigned by protocols established by the Nationwide
9 Mortgage Licensing System and Registry.

10 Sec. 180.004. EXEMPTION. This chapter does not apply to a
11 licensed attorney who negotiates the terms of a residential
12 mortgage loan on behalf of a client as an ancillary matter to the
13 attorney's representation of the client, unless the attorney is
14 compensated by:

15 (1) a lender, mortgage broker, or other mortgage loan
16 originator; or

17 (2) an agent of a lender, mortgage broker, or other
18 mortgage loan originator.

19 Sec. 180.005. ADMINISTRATIVE AUTHORITY. (a) A regulatory
20 official has broad authority to administer, interpret, and enforce
21 this chapter.

22 (b) A rulemaking authority has broad authority to adopt
23 rules to implement this chapter to carry out the legislature's
24 intent.

25 [Sections 180.006-180.050 reserved for expansion]

26 SUBCHAPTER B. LICENSING AND REGISTRATION REQUIREMENTS

27 Sec. 180.051. STATE LICENSE REQUIRED; RENEWAL. (a) An

1 individual may not engage in business as a mortgage loan originator
2 with respect to a dwelling located in this state unless the
3 individual:

4 (1) is licensed to engage in that business under
5 Chapter 127, 156, 157, 342, 347, 348, or 351; and

6 (2) complies with the requirements of this chapter.

7 (b) The individual must renew the license annually to be
8 considered licensed for purposes of this section.

9 (c) Notwithstanding any provision of law listed in
10 Subsection (a)(1), the regulatory official shall provide for annual
11 renewal of licenses for individuals seeking to engage in mortgage
12 loan origination activities.

13 Sec. 180.052. REGISTRATION WITH NATIONWIDE MORTGAGE
14 LICENSING SYSTEM AND REGISTRY. (a) A licensed mortgage loan
15 originator must register with and maintain a valid unique
16 identifier issued by the Nationwide Mortgage Licensing System and
17 Registry.

18 (b) A non-federally insured credit union that employs loan
19 originators, as defined by the S.A.F.E. Mortgage Licensing Act,
20 shall register those employees with the Nationwide Mortgage
21 Licensing System and Registry by furnishing the information
22 relating to the employees' identity set forth in Section 1507(a)(2)
23 of the S.A.F.E. Mortgage Licensing Act.

24 Sec. 180.053. AUTHORITY TO REQUIRE LICENSE AND
25 REGISTRATION. (a) The regulatory official who administers the law
26 under which a mortgage loan originator is licensed shall require
27 the mortgage loan originator to be registered through the

1 Nationwide Mortgage Licensing System and Registry.

2 (b) For purposes of implementing Subsection (a), the
3 regulatory official may participate in the Nationwide Mortgage
4 Licensing System and Registry.

5 Sec. 180.054. APPLICATION FORM. (a) A regulatory official
6 shall prescribe application forms for a license as a mortgage loan
7 originator.

8 (b) A regulatory official may change or update an
9 application form as necessary to carry out the purposes of this
10 chapter.

11 Sec. 180.055. CRIMINAL AND OTHER BACKGROUND CHECKS. (a) In
12 connection with an application for a license as a mortgage loan
13 originator, the applicant shall, at a minimum, furnish to the
14 Nationwide Mortgage Licensing System and Registry information
15 concerning the applicant's identity, including:

16 (1) fingerprints for submission to the Federal Bureau
17 of Investigation and any governmental agency or entity authorized
18 to receive the information to conduct a state, national, and
19 international criminal background check; and

20 (2) personal history and experience information in a
21 form prescribed by the Nationwide Mortgage Licensing System and
22 Registry, including the submission of authorization for the
23 Nationwide Mortgage Licensing System and Registry and the
24 appropriate regulatory official to obtain:

25 (A) an independent credit report obtained from a
26 consumer reporting agency described by Section 603(p), Fair Credit
27 Reporting Act (15 U.S.C. Section 1681a(p)); and

1 (B) information related to any administrative,
2 civil, or criminal findings by a governmental jurisdiction.

3 (b) For purposes of this section and to reduce the points of
4 contact that the Federal Bureau of Investigation may have to
5 maintain for purposes of Subsection (a)(1), a regulatory official
6 may use the Nationwide Mortgage Licensing System and Registry as a
7 channeling agent for requesting information from and distributing
8 information to the United States Department of Justice, any
9 governmental agency, or any source at the regulatory official's
10 direction.

11 Sec. 180.056. ISSUANCE OF LICENSE. (a) The regulatory
12 official may not issue a mortgage loan originator license to an
13 individual unless the regulatory official determines, at a minimum,
14 that the applicant:

15 (1) has not had a mortgage loan originator license
16 revoked in any governmental jurisdiction;

17 (2) has not been convicted of, or pled guilty or nolo
18 contendere to, a felony in a domestic, foreign, or military court:

19 (A) during the seven-year period preceding the
20 date of application; or

21 (B) at any time preceding the date of
22 application, if the felony involved an act of fraud, dishonesty,
23 breach of trust, or money laundering;

24 (3) demonstrates financial responsibility, character,
25 and general fitness so as to command the confidence of the community
26 and to warrant a determination that the individual will operate
27 honestly, fairly, and efficiently as a mortgage loan originator

1 within the purposes of this chapter and any other appropriate
2 regulatory law of this state;

3 (4) provides satisfactory evidence that the applicant
4 has completed prelicensing education courses described by Section
5 180.057;

6 (5) provides satisfactory evidence of having passed an
7 examination that meets the requirements of Section 180.058; and

8 (6) has paid a recovery fund fee or surety bond as
9 required under the appropriate state regulatory law.

10 (b) A revocation that has been formally vacated may not be
11 considered a license revocation for purposes of Subsection (a)(1).

12 (c) A conviction for which a full pardon has been granted
13 may not be considered a conviction for purposes of Subsection
14 (a)(2).

15 (d) For purposes of Subsection (a)(3), an individual is
16 considered not to be financially responsible if the individual has
17 shown a lack of regard in managing the individual's own financial
18 affairs or condition. A determination that an individual has not
19 shown financial responsibility may include:

20 (1) an outstanding judgment against the individual,
21 other than a judgment imposed solely as a result of medical
22 expenses;

23 (2) an outstanding tax lien or other governmental
24 liens and filings;

25 (3) a foreclosure during the three-year period
26 preceding the date of the license application; and

27 (4) a pattern of substantially delinquent accounts

1 during the three-year period preceding the date of the application.

2 Sec. 180.057. PRELICENSING EDUCATIONAL COURSES. (a) An
3 applicant for a mortgage loan originator license must complete
4 education courses that include, at a minimum, at least the minimum
5 number of hours and type of courses required by the S.A.F.E.
6 Mortgage Licensing Act and the minimum number of hours of training
7 related to lending standards for the nontraditional mortgage
8 product marketplace required by that Act.

9 (b) Education courses required under this section must be
10 reviewed and approved by the Nationwide Mortgage Licensing System
11 and Registry in accordance with the S.A.F.E. Mortgage Licensing
12 Act.

13 (c) Nothing in this section precludes any education course
14 approved in accordance with the S.A.F.E. Mortgage Licensing Act
15 from being provided by:

16 (1) an applicant's employer;

17 (2) an entity affiliated with the applicant by an
18 agency contract; or

19 (3) a subsidiary or affiliate of the employer or
20 entity.

21 (d) Education courses required under this section may be
22 offered in a classroom, online, or by any other means approved by
23 the Nationwide Mortgage Licensing System and Registry.

24 (e) An individual who has successfully completed
25 prelicensing education requirements approved by the Nationwide
26 Mortgage Licensing System and Registry for another state shall be
27 given credit toward completion of the prelicensing education

1 requirements of this section if the regulatory official determines
2 that the prelicensing education requirements the individual has
3 completed are substantially equivalent to those of this state.

4 (f) An applicant who has previously held a mortgage loan
5 originator license that meets the requirements of this chapter and
6 other appropriate regulatory law, before being issued a new
7 original license, must demonstrate to the appropriate regulatory
8 official that the applicant has completed all continuing education
9 requirements for the calendar year in which the license was last
10 held by the applicant.

11 (g) If the appropriate federal regulators and the
12 Nationwide Mortgage Licensing System and Registry establish
13 additional educational requirements for licensed mortgage loan
14 originators, the rulemaking authority shall adopt necessary rules
15 to implement the changes to the educational requirements of this
16 section.

17 Sec. 180.058. EXAMINATION REQUIREMENTS. (a) An applicant
18 for a mortgage loan originator license must pass a qualified,
19 written examination that meets the standards and requirements
20 established by the S.A.F.E. Mortgage Licensing Act, is developed by
21 the Nationwide Mortgage Licensing System and Registry, and is
22 administered by a test provider in accordance with that Act.

23 (b) An individual may retake the examination the number of
24 times and within the period prescribed by the S.A.F.E. Mortgage
25 Licensing Act.

26 (c) An individual who fails to maintain a mortgage loan
27 originator license for at least five consecutive years must retake

1 the examination.

2 (d) This section does not prohibit a test provider approved
3 in accordance with the S.A.F.E. Mortgage Licensing Act from
4 providing an examination at the location of:

5 (1) the license applicant's employer;

6 (2) a subsidiary or affiliate of the applicant's
7 employer; or

8 (3) an entity with which the applicant holds an
9 exclusive arrangement to conduct the business of a mortgage loan
10 originator.

11 Sec. 180.059. SURETY BOND OR RECOVERY FUND FEE REQUIREMENT.

12 (a) A regulatory official may not issue a mortgage loan originator
13 license unless the official determines that the applicant meets the
14 surety bond requirement or has paid a recovery fund fee, as
15 applicable, in accordance with the requirements of the S.A.F.E.
16 Mortgage Licensing Act.

17 (b) Each regulatory official shall adopt rules requiring an
18 individual licensed as a mortgage loan originator to have a surety
19 bond or pay a recovery fund fee as the official determines
20 appropriate to comply with the S.A.F.E. Mortgage Licensing Act.

21 Sec. 180.060. STANDARDS FOR LICENSE RENEWAL. A license to
22 act as a mortgage loan originator may be renewed on or before its
23 expiration date if the license holder:

24 (1) continues to meet the minimum requirements for
25 license issuance; and

26 (2) provides satisfactory evidence that the license
27 holder has completed the continuing education requirements of

1 Section 180.061.

2 Sec. 180.061. CONTINUING EDUCATION COURSES. (a) To renew a
3 mortgage loan originator license, a license holder must annually
4 complete the minimum number of hours and type of continuing
5 education courses required by the S.A.F.E. Mortgage Licensing Act,
6 the minimum requirements established by the Nationwide Mortgage
7 Licensing System and Registry, and any additional requirements
8 established by the regulatory official.

9 (b) Continuing education courses, including the course
10 provider, must be reviewed and approved by the Nationwide Mortgage
11 Licensing System and Registry as required by the S.A.F.E. Mortgage
12 Licensing Act. Course credit must be granted in accordance with
13 that Act.

14 (c) Nothing in this section precludes any continuing
15 education course approved in accordance with the S.A.F.E. Mortgage
16 Licensing Act from being provided by:

17 (1) the employer of the license holder;

18 (2) an entity affiliated with the license holder by an
19 agency contract; or

20 (3) a subsidiary or affiliate of the employer or
21 entity.

22 (d) A person who successfully completes continuing
23 education requirements approved by the Nationwide Mortgage
24 Licensing System and Registry for another state shall be given
25 credit toward completion of the continuing education requirements
26 of this section if the regulatory official determines that the
27 continuing education requirements the person has completed are

1 substantially equivalent to those of this state.

2 Sec. 180.062. RULEMAKING AUTHORITY. A rulemaking authority
3 may adopt rules establishing requirements as necessary for:

4 (1) conducting background checks by obtaining:

5 (A) criminal history information through
6 fingerprint or other databases;

7 (B) civil administrative records;

8 (C) credit history information; or

9 (D) any other information considered necessary
10 by the Nationwide Mortgage Licensing System and Registry;

11 (2) payment of fees to apply for or renew licenses
12 through the Nationwide Mortgage Licensing System and Registry;

13 (3) setting or resetting, as necessary, license
14 renewal dates or reporting periods; and

15 (4) amending or surrendering a license or any other
16 activity a regulatory official considers necessary for
17 participation in the Nationwide Mortgage Licensing System and
18 Registry.

19 [Sections 180.063-180.100 reserved for expansion]

20 SUBCHAPTER C. REPORTING AND OTHER REQUIREMENTS REGARDING

21 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY

22 Sec. 180.101. MORTGAGE CALL REPORTS. Each licensed
23 mortgage loan originator shall submit to the Nationwide Mortgage
24 Licensing System and Registry a report of condition that is in the
25 form and contains the information required by the Nationwide
26 Mortgage Licensing System and Registry.

27 Sec. 180.102. REPORT OF VIOLATIONS AND ENFORCEMENT ACTIONS.

1 A regulatory official shall report to the Nationwide Mortgage
2 Licensing System and Registry on a regular basis regarding any
3 violations of this chapter, enforcement actions, and other relevant
4 information.

5 Sec. 180.103. INFORMATION CHALLENGE PROCESS. The
6 applicable rulemaking authority by rule shall establish a process
7 by which licensed mortgage loan originators may dispute information
8 submitted by the regulatory official to the Nationwide Mortgage
9 Licensing System and Registry.

10 [Sections 180.104-180.150 reserved for expansion]

11 SUBCHAPTER D. BUSINESS PRACTICES

12 Sec. 180.151. DISPLAY OF UNIQUE IDENTIFIER. The unique
13 identifier of a person originating a residential mortgage loan must
14 be clearly shown on each residential mortgage loan application
15 form, solicitation, or advertisement, including business cards and
16 websites, and any other document required by rule of the rulemaking
17 authority.

18 Sec. 180.152. REPRESENTATIONS. An individual who is
19 engaged exclusively in loan processor or underwriter activities may
20 not represent to the public, through the use of advertising,
21 business cards, stationery, brochures, signs, rate lists, or other
22 means, that the individual can or will perform any of the activities
23 of a mortgage loan originator.

24 [Sections 180.153-180.200 reserved for expansion]

25 SUBCHAPTER E. ENFORCEMENT PROVISIONS

26 Sec. 180.201. ENFORCEMENT AUTHORITY. To ensure the
27 effective supervision and enforcement of this chapter, a regulatory

1 official may:

2 (1) deny, suspend, revoke, condition, or decline to
3 renew a license for a violation of this chapter, a rule adopted
4 under this chapter, or an order or directive issued under this
5 chapter;

6 (2) deny, suspend, revoke, condition, or decline to
7 renew a license if an applicant or license holder:

8 (A) fails to meet the requirements of Subchapter
9 B; or

10 (B) withholds information or makes a material
11 misstatement in an application for a license or renewal of a
12 license;

13 (3) order restitution against a person subject to
14 regulation under this chapter for a violation of this chapter;

15 (4) impose an administrative penalty on a person
16 subject to regulation under this chapter, subject to Section
17 180.202; or

18 (5) issue orders or directives as provided by Section
19 180.203.

20 Sec. 180.202. ADMINISTRATIVE PENALTY. (a) A regulatory
21 official may impose an administrative penalty on a mortgage loan
22 originator or other person subject to regulation under this
23 chapter, if the official, after notice and opportunity for hearing,
24 determines that the mortgage loan originator or other person
25 subject to regulation under this chapter has violated or failed to
26 comply with:

27 (1) this chapter;

1 (2) a rule adopted under this chapter; or

2 (3) an order issued under this chapter.

3 (b) The penalty may not exceed \$25,000 for each violation.

4 (c) The amount of the penalty shall be based on:

5 (1) the seriousness of the violation, including the
6 nature, circumstances, extent, and gravity of the violation;

7 (2) the economic harm to property caused by the
8 violation;

9 (3) the history of previous violations;

10 (4) the amount necessary to deter a future violation;

11 (5) efforts to correct the violation; and

12 (6) any other matter that justice may require.

13 Sec. 180.203. CEASE AND DESIST ORDERS. A regulatory
14 official may:

15 (1) order or direct a person subject to regulation
16 under this chapter to cease and desist from conducting business,
17 including issuing an immediate temporary order to cease and desist
18 from conducting business;

19 (2) order or direct a person subject to regulation
20 under this chapter to cease a violation of this chapter or a harmful
21 activity in violation of this chapter, including issuing an
22 immediate temporary order to cease and desist;

23 (3) enter immediate temporary orders against a person
24 subject to regulation under this chapter to cease engaging in
25 business under a license if the regulatory official determines that
26 the license was erroneously granted or the license holder is in
27 violation of this chapter; and

1 (4) order or direct other affirmative action as the
2 regulatory official considers necessary.

3 [Sections 180.204-180.250 reserved for expansion]

4 SUBCHAPTER F. DUTIES OF REGULATORY OFFICIALS

5 Sec. 180.251. GENERAL DUTIES OF REGULATORY OFFICIALS. (a)

6 The savings and mortgage lending commissioner shall administer and
7 enforce this chapter with respect to individuals licensed under
8 Chapter 156 or 157.

9 (b) The credit union commissioner shall administer and
10 enforce this chapter with respect to individuals licensed under
11 Chapter 127.

12 (c) The consumer credit commissioner shall administer and
13 enforce this chapter with respect to individuals licensed under
14 Chapter 342, 347, 348, or 351.

15 Sec. 180.252. AUTHORITY OF REGULATORY OFFICIALS TO
16 ESTABLISH RELATIONSHIP WITH NATIONWIDE MORTGAGE LICENSING SYSTEM
17 AND REGISTRY; CONTRACTING AUTHORITY. To fulfill the purposes of
18 this chapter, a regulatory official may establish a relationship
19 with or contract with the Nationwide Mortgage Licensing System and
20 Registry or an entity designated by the Nationwide Mortgage
21 Licensing System and Registry to collect and maintain records and
22 process transaction fees or other fees related to licensed mortgage
23 loan originators or other persons subject to regulation under this
24 chapter.

25 SECTION 2. Section 14.107(b), Finance Code, is amended to
26 read as follows:

27 (b) The finance commission by rule shall set the fees for

1 licensing and examination under Chapter 342, 347, 348, 351, or 371
2 at amounts or rates necessary to recover the costs of administering
3 those chapters. The rules may provide that the amount of a fee
4 charged to a license holder is based on the volume of the license
5 holder's regulated business and other key factors. The
6 commissioner may provide for collection of a single annual fee from
7 a person licensed under Chapter 342, 347, 348, 351, or 371 to
8 include amounts due for both licensing and examination.

9 SECTION 3. Subtitle D, Title 3, Finance Code, is amended by
10 adding Chapter 127 to read as follows:

11 CHAPTER 127. REGULATION OF MORTGAGE LOAN ORIGINATORS EMPLOYED BY
12 CREDIT UNION SUBSIDIARY ORGANIZATIONS

13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 127.001. DEFINITIONS. In this chapter:

15 (1) "Credit union" means a state or federal credit
16 union operating in this state.

17 (2) "Credit union subsidiary organization" means an
18 agency, association, or company wholly or partly owned by a credit
19 union that is designed primarily to serve or otherwise assist
20 credit union operations. The term includes a credit union service
21 organization authorized by:

22 (A) Section 124.351(a)(1);

23 (B) commission rule; or

24 (C) Part 712 of the National Credit Union
25 Administration's Rules and Regulations.

26 (3) "Mortgage loan originator" has the meaning
27 assigned by Section 180.003.

1 (4) "Nationwide Mortgage Licensing System and
2 Registry" has the meaning assigned by Section 180.003.

3 Sec. 127.002. RULEMAKING AUTHORITY. The commission may
4 adopt and enforce reasonable rules necessary to administer and
5 accomplish the purposes of this chapter, including rules
6 establishing procedures for issuing, renewing, and enforcing a
7 license under this chapter.

8 Sec. 127.003. AUTHORITY TO SHARE INFORMATION. The
9 commissioner may enter into agreements or share arrangements with
10 other governmental agencies, the Conference of State Bank
11 Supervisors, the American Association of Residential Mortgage
12 Regulators, or other associations representing governmental
13 agencies as established by commission rule.

14 [Sections 127.004-127.050 reserved for expansion]

15 SUBCHAPTER B. LICENSE REQUIREMENTS

16 Sec. 127.051. LICENSE REQUIRED. An employee of a credit
17 union subsidiary organization may not act as a mortgage loan
18 originator unless the employee:

- 19 (1) is licensed under this chapter;
20 (2) is registered through the Nationwide Mortgage
21 Licensing System and Registry as required by Section 180.053; and
22 (3) complies with other applicable requirements of
23 Chapter 180 and rules adopted under that chapter.

24 Sec. 127.052. APPLICATION; FEES. (a) An application for a
25 mortgage loan originator license must be:

- 26 (1) in writing and under oath; and
27 (2) on the form prescribed by the commissioner.

1 (b) The application must be accompanied by an application
2 fee in an amount set by the commission. The application fee is not
3 refundable and may not be credited or applied to any other fee or
4 indebtedness owed by the applicant or any entity paying the fee.

5 Sec. 127.053. ISSUANCE OF LICENSE. The commissioner shall
6 issue a mortgage loan originator license to an applicant if the
7 commissioner determines that the applicant meets the requirements
8 prescribed by Section 180.056.

9 Sec. 127.054. CONFIDENTIALITY OF INFORMATION. Section
10 126.002 applies to information obtained by the department
11 concerning the financial condition or business affairs of a credit
12 union subsidiary organization or a mortgage loan originator.

13 [Sections 127.055-127.100 reserved for expansion]

14 SUBCHAPTER C. BOOKS AND RECORDS; REPORTS

15 Sec. 127.101. BOOKS AND RECORDS. (a) A credit union
16 subsidiary organization that employs a mortgage loan originator and
17 each license holder or other person subject to regulation under
18 this chapter shall, on request, make books and records available to
19 the commissioner for examination under Section 15.4032.

20 (b) The commissioner may interview the officers,
21 principals, mortgage loan originators, employees, independent
22 contractors, agents, and customers of the license holder or other
23 person subject to regulation under this chapter regarding any
24 mortgage loan originating activities.

25 Sec. 127.102. REPORTS AND OTHER INFORMATION. Each credit
26 union subsidiary organization that employs a mortgage loan
27 originator and each license holder or other person subject to

1 regulation under this chapter shall prepare or compile reports or
2 provide other information as required by the commissioner.

3 Sec. 127.103. REPORTS TO NATIONWIDE LICENSING SYSTEM AND
4 REGISTRY. Each credit union subsidiary organization that employs
5 mortgage loan originators shall submit to the Nationwide Mortgage
6 Licensing System and Registry reports of condition that are in the
7 form and contain the information required by the registry.

8 Sec. 127.104. WITHHOLDING RECORDS PROHIBITED. A credit
9 union subsidiary organization that employs a mortgage loan
10 originator or a license holder or other person subject to
11 regulation under this chapter may not withhold, abstract, remove,
12 mutilate, or destroy any books, records, computer records, or other
13 information related to mortgage loan origination activities.

14 [Sections 127.105-127.150 reserved for expansion]

15 SUBCHAPTER D. ENFORCEMENT

16 Sec. 127.151. CEASE AND DESIST ORDERS. If the commissioner
17 makes a finding listed in Section 122.255 and determines that an
18 order to cease and desist is necessary and in the best interest of
19 the credit union subsidiary organization involved, the
20 commissioner may serve on the credit union subsidiary organization
21 an order to cease and desist from a violation or practice specified
22 in the order as authorized by Section 122.257.

23 SECTION 4. Subchapter C, Chapter 156, Finance Code, is
24 amended by adding Section 156.2015 to read as follows:

25 Sec. 156.2015. MORTGAGE LOAN ORIGINATION ACTIVITIES. (a)
26 In this section, "mortgage loan originator" and "Nationwide
27 Mortgage Licensing System and Registry" have the meanings assigned

1 by Section 180.003.

2 (b) An individual subject to regulation under this chapter
3 may not act as a mortgage loan originator unless:

4 (1) the individual's license under this chapter
5 otherwise authorizes the individual to act as a mortgage loan
6 originator;

7 (2) the individual is registered through the
8 Nationwide Mortgage Licensing System and Registry as required by
9 Section 180.053; and

10 (3) the individual complies with other applicable
11 requirements of Chapter 180 and rules adopted under that chapter.

12 (c) The finance commission by rule may waive or modify,
13 wholly or partly, any requirement of this chapter and establish new
14 requirements as reasonably necessary to enable the commissioner to
15 participate in and individuals to register through the Nationwide
16 Mortgage Licensing System and Registry for purposes of this section
17 and Chapter 180.

18 SECTION 5. Chapter 157, Finance Code, is amended by adding
19 Section 157.0035 to read as follows:

20 Sec. 157.0035. MORTGAGE LOAN ORIGINATION ACTIVITIES. (a)
21 In this section, "mortgage loan originator" and "Nationwide
22 Mortgage Licensing System and Registry" have the meanings assigned
23 by Section 180.003.

24 (b) An individual subject to regulation under this chapter
25 may not act as a mortgage loan originator unless the individual:

26 (1) is licensed and registered through the Nationwide
27 Mortgage Licensing System and Registry as required by Section

1 180.053; and

2 (2) complies with other applicable requirements of
3 Chapter 180 and rules adopted under that chapter.

4 SECTION 6. Subchapter B, Chapter 342, Finance Code, is
5 amended by adding Section 342.0515 to read as follows:

6 Sec. 342.0515. MORTGAGE LOAN ORIGINATOR ACTIVITIES. (a)
7 In this section, "mortgage loan originator" and "Nationwide
8 Mortgage Licensing System and Registry" have the meanings assigned
9 by Section 180.003.

10 (b) An individual who acts as a mortgage loan originator in
11 the making, transacting, or negotiating of a loan subject to this
12 chapter must:

13 (1) be licensed to engage in that activity under this
14 chapter;

15 (2) be registered through the Nationwide Mortgage
16 Licensing System and Registry as required by Section 180.053; and

17 (3) comply with other applicable requirements of
18 Chapter 180 and rules adopted under that chapter.

19 (c) The finance commission shall adopt rules establishing
20 procedures for issuing, renewing, and enforcing a license under
21 this section. In adopting rules under this subsection, the finance
22 commission shall ensure that:

23 (1) the minimum eligibility requirements for issuance
24 of a license are the same as the requirements of Section 180.056;

25 (2) the minimum eligibility requirements for renewal
26 of a license are the same as the requirements of Section 180.060;

27 and

1 (3) the applicant pays:

2 (A) an investigation fee in a reasonable amount
3 determined by the commissioner; and

4 (B) an annual license fee in an amount determined
5 as provided by Section 14.107.

6 (d) The finance commission by rule may waive or modify,
7 wholly or partly, any requirement of this chapter and establish new
8 requirements as reasonably necessary to enable the commissioner to
9 participate in the Nationwide Mortgage Licensing System and
10 Registry for purposes of this section and Chapter 180.

11 SECTION 7. Section 342.156, Finance Code, is amended to
12 read as follows:

13 Sec. 342.156. LICENSE SUSPENSION OR REVOCATION. After
14 notice and a hearing the commissioner may suspend or revoke a
15 license if the commissioner finds that:

16 (1) the license holder failed to pay the annual
17 license fee, an examination fee, an investigation fee, or another
18 charge imposed by the commissioner under this chapter;

19 (2) the license holder, knowingly or without the
20 exercise of due care, violated this chapter or a rule adopted or
21 order issued under this chapter; ~~[or]~~

22 (3) a fact or condition exists that, if it had existed
23 or had been known to exist at the time of the original application
24 for the license, clearly would have justified the commissioner's
25 denial of the application; or

26 (4) the license holder has failed to ensure that an
27 individual acting as a mortgage loan originator, as defined by

1 Section 180.003, in the making, transacting, or negotiating of a
2 loan subject to this chapter is licensed under this chapter in
3 accordance with Section 342.0515.

4 SECTION 8. The heading to Subchapter J, Chapter 347,
5 Finance Code, is amended to read as follows:

6 SUBCHAPTER J. RIGHTS AND DUTIES OF CREDITOR AND MORTGAGE LOAN
7 ORIGINATOR

8 SECTION 9. Section 347.451, Finance Code, is amended by
9 adding Subsection (b-1) to read as follows:

10 (b-1) A registered creditor must meet the surety bond
11 requirement of the creditor's mortgage loan originator under
12 Section 180.059.

13 SECTION 10. Subchapter J, Chapter 347, Finance Code, is
14 amended by adding Section 347.4515 to read as follows:

15 Sec. 347.4515. MORTGAGE LOAN ORIGINATOR LICENSE REQUIRED.

16 (a) In this section, "mortgage loan originator" and "Nationwide
17 Mortgage Licensing System and Registry" have the meanings assigned
18 by Section 180.003.

19 (b) An individual who acts as a mortgage loan originator in
20 the making, transacting, or negotiating of an extension of credit
21 subject to this chapter must:

22 (1) be licensed to engage in that activity under this
23 chapter;

24 (2) be registered through the Nationwide Mortgage
25 Licensing System and Registry as required by Section 180.053; and

26 (3) comply with other applicable requirements of
27 Chapter 180 and rules adopted under that chapter.

1 (c) The finance commission shall adopt rules establishing
2 procedures for issuing, renewing, and enforcing a license under
3 this section. In adopting rules under this subsection, the finance
4 commission shall ensure that:

5 (1) the minimum eligibility requirements for issuance
6 of a license are the same as the requirements of Section 180.056;

7 (2) the minimum eligibility requirements for renewal
8 of a license are the same as the requirements of Section 180.060;
9 and

10 (3) the applicant pays:

11 (A) an investigation fee in a reasonable amount
12 determined by the commissioner; and

13 (B) an annual license fee in an amount determined
14 as provided by Section 14.107.

15 (d) The finance commission by rule may waive or modify,
16 wholly or partly, any requirement of this chapter and establish new
17 requirements as reasonably necessary to enable the commissioner to
18 participate in the Nationwide Mortgage Licensing System and
19 Registry for purposes of this section and Chapter 180.

20 SECTION 11. Section 348.501, Finance Code, is amended by
21 adding Subsection (c) to read as follows:

22 (c) A license holder under this chapter who engages in the
23 sale of a motor vehicle to be used as a principal dwelling must meet
24 the surety bond requirements of the holder's mortgage loan
25 originator under Section 180.059.

26 SECTION 12. Subchapter F, Chapter 348, Finance Code, is
27 amended by adding Section 348.5015 to read as follows:

1 Sec. 348.5015. MORTGAGE LOAN ORIGINATOR LICENSE REQUIRED.

2 (a) In this section, "mortgage loan originator" and "Nationwide
3 Mortgage Licensing System and Registry" have the meanings assigned
4 by Section 180.003.

5 (b) An individual who acts as a mortgage loan originator in
6 the sale of a motor vehicle to be used as a principal dwelling must:

7 (1) be licensed to engage in that activity under this
8 chapter;

9 (2) be registered through the Nationwide Mortgage
10 Licensing System and Registry as required by Section 180.053; and

11 (3) comply with other applicable requirements of
12 Chapter 180 and rules adopted under that chapter.

13 (c) The finance commission shall adopt rules establishing
14 procedures for applying for issuing, renewing, and enforcing a
15 license under this section. In adopting rules under this
16 subsection, the finance commission shall ensure that:

17 (1) the minimum eligibility requirements for issuance
18 of a license are the same as the requirements of Section 180.056;

19 (2) the minimum eligibility requirements for renewal
20 of a license are the same as the requirements of Section 180.060;
21 and

22 (3) the applicant pays:

23 (A) an investigation fee in a reasonable amount
24 determined by the commissioner; and

25 (B) an annual license fee in an amount determined
26 as provided by Section 14.107.

27 (d) The finance commission by rule may waive or modify,

1 wholly or partly, any requirement of this chapter and establish new
2 requirements as reasonably necessary to enable the commissioner to
3 participate in the Nationwide Mortgage Licensing System and
4 Registry for purposes of this section and Chapter 180.

5 SECTION 13. Subchapter B, Chapter 351, Finance Code, as
6 added by Chapter 1220 (H.B. 2138), Acts of the 80th Legislature,
7 Regular Session, 2007, is amended by adding Section 351.0515 to
8 read as follows:

9 Sec. 351.0515. MORTGAGE LOAN ORIGINATOR LICENSE REQUIRED.

10 (a) In this section, "mortgage loan originator" and "Nationwide
11 Mortgage Licensing System and Registry" have the meanings assigned
12 by Section 180.003.

13 (b) An individual who acts as a mortgage loan originator in
14 the making, transacting, or negotiating of a property tax loan for a
15 principal dwelling must:

16 (1) be licensed to engage in that activity under this
17 chapter;

18 (2) be registered through the Nationwide Mortgage
19 Licensing System and Registry as required by Section 180.053; and

20 (3) comply with other applicable requirements of
21 Chapter 180 and rules adopted under that chapter.

22 (c) The finance commission shall adopt rules establishing
23 procedures for issuing, renewing, and enforcing a license under
24 this section. In adopting rules under this subsection, the finance
25 commission shall ensure that:

26 (1) the minimum eligibility requirements for issuance
27 of a license are the same as the requirements of Section 180.056;

1 (2) the minimum eligibility requirements for renewal
2 of a license are the same as the requirements of Section 180.060;
3 and

4 (3) the applicant pays:

5 (A) an investigation fee in a reasonable amount
6 determined by the commissioner; and

7 (B) an annual license fee in an amount determined
8 as provided by Section 14.107.

9 (d) The finance commission by rule may waive or modify,
10 wholly or partly, any requirement of this chapter and establish new
11 requirements as reasonably necessary to enable the commissioner to
12 participate in the Nationwide Mortgage Licensing System and
13 Registry for purposes of this section and Chapter 180.

14 SECTION 14. Section 351.102, Finance Code, as added by
15 Chapter 1220 (H.B. 2138), Acts of the 80th Legislature, Regular
16 Session, 2007, is amended by adding Subsection (e) to read as
17 follows:

18 (e) A license holder engaged in the business of making,
19 transacting, or negotiating a property tax loan for a principal
20 dwelling must meet the surety bond requirement of the holder's
21 mortgage loan originator under Section 180.059.

22 SECTION 15. Section 351.156, Finance Code, as added by
23 Chapter 1220 (H.B. 2138), Acts of the 80th Legislature, Regular
24 Session, 2007, is amended to read as follows:

25 Sec. 351.156. LICENSE SUSPENSION OR REVOCATION. After
26 notice and a hearing the commissioner may suspend or revoke a
27 license if the commissioner finds that:

1 (1) the license holder failed to pay the annual
2 license fee, an examination fee, an investigation fee, or another
3 charge imposed by the commissioner under this chapter;

4 (2) the license holder, knowingly or without the
5 exercise of due care, violated this chapter or Section 32.06 or
6 32.065, Tax Code, or a rule adopted or an order issued under this
7 chapter or Section 32.06 or 32.065, Tax Code; ~~[or]~~

8 (3) a fact or condition exists that, if it had existed
9 or had been known to exist at the time of the original application
10 for the license, clearly would have justified the commissioner's
11 denial of the application; or

12 (4) the license holder has failed to ensure that an
13 individual acting as a mortgage loan originator, as defined by
14 Section 180.003, in the making, transacting, or negotiating of a
15 property tax loan for a principal dwelling is licensed under this
16 chapter in accordance with Section 351.0515.

17 SECTION 16. Section 411.095, Government Code, is amended to
18 read as follows:

19 Sec. 411.095. ACCESS TO CRIMINAL HISTORY RECORD
20 INFORMATION: CONSUMER CREDIT COMMISSIONER. [~~(a)~~] The consumer
21 credit commissioner is entitled to obtain from the department
22 criminal history record information that relates to a person who is
23 an applicant for or holder of a license under Chapter 342, 347, 348,
24 351, or 371, Finance Code.

25 SECTION 17. Section 411.1407(a), Government Code, is
26 amended to read as follows:

27 (a) The credit union commissioner is entitled to obtain from

1 the department criminal history record information maintained by
2 the department that relates to a person who is:

3 (1) an individual who applies to incorporate a credit
4 union under Subtitle D, Title 3, Finance Code;

5 (2) a board member of a credit union incorporated
6 under Subtitle D, Title 3, Finance Code;

7 (3) an applicant for employment by the credit union
8 department; ~~or~~

9 (4) an employee of the credit union department; or

10 (5) an applicant for a mortgage loan originator
11 license under Chapter 127, Finance Code.

12 SECTION 18. For purposes of implementing an orderly and
13 efficient process for licensing and registering mortgage loan
14 originators that meets the requirements of the federal Secure and
15 Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No.
16 110-289), Chapters 127 and 180, Finance Code, as added by this Act,
17 and Chapters 156, 157, 342, 347, 348, and 351, Finance Code, as
18 amended by this Act, the Finance Commission of Texas and the credit
19 union commissioner, as soon as practicable after the effective date
20 of this Act, may adopt rules and establish interim procedures for
21 licensing persons engaging in or conducting the business of a
22 mortgage loan originator in this state and for the approval or
23 denial of applications for licenses authorizing persons to engage
24 in business as a mortgage loan originator. For individuals or other
25 persons authorized by state law to engage in mortgage loan
26 origination activities immediately before the effective date of
27 this Act, the Finance Commission of Texas may establish expedited

1 review and licensing procedures.

2 SECTION 19. (a) Except as provided by Subsection (b) of
3 this section, an individual is not required to comply with Chapters
4 127 and 180, Finance Code, as added by this Act, and Chapters 156,
5 157, 342, 347, 348, and 351, Finance Code, as amended by this Act,
6 until the later of:

7 (1) July 31, 2010; or

8 (2) a subsequent date that is approved by the
9 secretary of the United States Department of Housing and Urban
10 Development under the authority granted under the federal Secure
11 and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No.
12 110-289).

13 (b) An individual authorized to engage in mortgage loan
14 origination activities in this state as of July 31, 2009, is not
15 required to comply with Chapters 127 and 180, Finance Code, as added
16 by this Act, and Chapters 156, 157, 342, 347, 348, and 351, Finance
17 Code, as amended by this Act, until the later of:

18 (1) July 31, 2011; or

19 (2) a subsequent date approved by the secretary of the
20 United States Department of Housing and Urban Development under the
21 authority granted under the federal Secure and Fair Enforcement for
22 Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

23 SECTION 20. This Act takes effect September 1, 2009.